

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
SOUTHERN DIVISION

HAZEL BALABAN,

Plaintiff,

vs.

Case No.: 20-

Honorable

THE HOME DEPOT USA, INC.,

Defendant.

Louis G. Corey (P34377)
Attorney for Plaintiff
401 N. Main Street
Royal Oak, MI 48067
(248) 548-9700 fax (248) 548-9990
lou@coreylawfirm.com

Carolyn M. Jereck (P41748)
PLUNKETT COONEY
Attorneys for Defendant
333 Bridge Street NW, Suite 530
Grand Rapids, MI 49504
(248) 594-6363/(616) 752-4607 (fax)
cjereck@plunkettcooney.com

**REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION**

To: United States District Court
Judges of the Above Court

NOW COMES Defendant HOME DEPOT USA, INC., by and through its attorneys, Plunkett Cooney, and pursuant to 28 USCA §1332, 1441 and 1446, files the within Notice of Removal as follows:

1. On or about September 23, 2020, there was commenced, and is now pending in the Circuit Court for the County of Wayne, State of Michigan, a certain

personal injury civil action bearing Civil Court Case No. 20-010503-NO, in which Hazel Balaban is the Plaintiff, and Home Depot USA, Inc., has been identified as Defendant.

1. Plaintiff's lawsuit is a suit of common law of a civil nature, in which Plaintiff claims to have been struck in the head by a steel pipe while shopping inside Defendant's Meyers Road location in Detroit on August 8, 2020, resulting in various serious and permanent injuries and damages, alleged to include:

- a) Head injury/concussion;
- b) Facial injuries and scarring
- c) a broken nose;
- d) Physical pain and suffering, past, present and future;
- e) Fright and shock, past present and future;
- f) Embarrassment, past present and future;
- g) Medical expenses, past, present and future;
- h) Other injuries and damages to be determined as they become known through the course of discovery.

(Exhibit 1 – Complaint).

2. As set forth in the Complaint filed on her behalf, Plaintiff has asserted a generalized demand alleged to be in excess of the state court jurisdictional limitation of Twenty Five Thousand Dollars (\$25,000.00). (Exhibit 1).

3. However, based upon the nature and extent of injuries and damages claimed, it appears that Plaintiff is, in reality, seeking to recover in excess of Seventy Five Thousand Dollars (\$75,000.00).

4. Further, and *assuming arguendo* that liability, proximate cause and related injuries alleged are conclusively established, it is defense counsel's experience that damages such as those alleged by Plaintiff, are routinely valued in this jurisdiction in excess of Seventy Five Thousand Dollars (\$75,000.00).

5. Moreover, Defendant has no reason to believe that Plaintiff is agreeable at this time to stipulating to cap and/or otherwise limit the value of injuries and/or damages claimed to Seventy Five Thousand Dollars (\$75,000.00).

6. Thus, as things presently stand, this action involves a controversy with complete diversity of citizenship between citizens of different states and therefore, satisfies the requirement set forth in 27 USCA §1332. More specifically, Defendant affirmatively avers that:

a. Plaintiff is now and was at the time of the commencement of this action, a resident and citizen of the State of New York (Exhibit 1).

b. Defendant HOME DEPOT USA, INC., was at the commencement of this action and now and ever since, has been a corporation duly created and organized by and under the laws of the State of Delaware with its principal place of business in Atlanta, Georgia;

c. Defendant HOME DEPOT, USA, INC., was not and is not a corporation created or organized under the laws of the States of Michigan or New York, and does not have or maintain its principal place of business in Michigan or New York.

6. This action is therefore, a controversy between a citizen of the State of New York, on the one hand as Plaintiff, having complete diversity as to Defendant HOME DEPOT, USA, INC., involving an amount in controversy of more than \$75,000.00 over which the Federal District of the United States has jurisdiction (Exhibit 1 - Complaint).

7. Defendant has filed no pleadings in the Circuit Court for the County of Wayne, and has not filed an appearance or any pleadings, engaged or otherwise participated in any prior proceedings in said cause to the extent any have taken place to date in the State Court in which the original Complaint was filed.

8. Defendant Home Depot USA, Inc.'s Resident Agent was served with the Summons and Complaint on October 9, 2020 via certified mail.

9. Accordingly, this Removal has been timely filed within thirty (30) days and remains fully proper pursuant to the statutes above cited for the reasons stated.

10. A copy of the written Notice of Filing of this Removal has been provided to Plaintiff through counsel as required by law and is also attached.

11. A true and correct copy of this Removal has been filed with the Wayne County Circuit Court as provided by law.

WHEREFORE Defendant HOME DEPOT USA, INC., respectfully requests this Honorable Court to effectuate removal of this civil action from the Circuit Court for the County of Wayne, State of Michigan, to the United States District Court for the Eastern District of Michigan, Southern Division.

Respectfully submitted,

PLUNKETT COONEY

/s/ Carolyn M. Jereck

By:

Carolyn M. Jereck (P41748)
Attorney for Defendant
333 Bridge Street NW, Suite 530
Grand Rapids, MI 49504
(248) 594-6363
cjereck@plunkettcooney.com

Dated: November 6, 2020

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PROOF OF SERVICE

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

The undersigned certifies that a copy of Defendant's Notice of Removal of Cause to the United States District Court for the Eastern District of Michigan, and Proof of Service was e-served on November 5, 2020. I declare under penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

PLUNKETT COONEY

/s/ Carolyn M. Jereck

By: _____

Carolyn M. Jereck (P41748)
Attorney for Defendant
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